

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

**ROGER W. TITUS**  
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE  
GREENBELT, MARYLAND 20770  
301-344-0052

**M E M O R A N D U M**  
**UNDER SEAL**

TO: Counsel of Record

FROM: Judge Roger W. Titus

RE: *United States of America v. Washington Metropolitan Area Transit Authority*  
Criminal Case No. RWT-09-557

DATE: November 9, 2009

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On October 28, 2009, the United States Attorney filed a criminal complaint against the defendant, Washington Metropolitan Area Transit Authority ("WMATA"), charging it with a violation of the Clean Water Act, 33 U.S.C §§ 1317(d) and 1319 (c)(1)(A). At the request of the government, a hearing has been scheduled for a plea and sentencing on November 25, 2009, at 10:00 a.m.

Although no motion to seal was filed, the clerk was requested to place the entire file under seal and did so. When the sealed file was brought to this judge's attention, he noted that the file had been sealed without a court order and directed his law clerk to advise the United States Attorney that a motion should be filed if the case file were to remain under seal.

On October 30, 2009, the United States Attorney filed a pro forma motion to seal, giving no reasons for the request, and an order was signed by Magistrate Judge Jillyn Schulze. The order entered by Judge Schulze was typical of the type of order entered when a criminal case file is opened and the defendant has not yet been arrested. Sealing of a criminal file may be appropriate where the defendant has not yet been arrested and public access to the court file might interfere with arrest of the defendant.

In this case, however, the defendant is a public agency, and sealing of the entire case file cannot be supported on the ground that public access would interfere with its arrest. On November 3, 2009, the court directed the government to file a motion to seal articulating specific fact-based reasons supporting the continued sealing of this case.

On November 4, 2009, the government filed a second motion to seal, advising the court that the motion was being filed “at the request of the defendant” and articulating as the basis for sealing the entire file “avoiding unnecessary publicity prior to the date of the plea hearing.” As explained below, the motion will be denied.

This court’s business is public business, and that is especially so when the defendant before it is a public agency. Local Rule 211 incorporates Local Rule 105.11, which governs sealing court files and documents. That rule requires “specific factual representations to justify the sealing and . . . an explanation why alternatives to sealing would not provide sufficient protection.” This rule is in recognition of the concept that “the press and public have a qualified First Amendment right to attend a criminal trial.” Waller v. Georgia, 467 U.S. 39, 44 (1984). This right extends not only to presence in a courtroom, but also to access to court records. Nixon v. Warner Commc’ns, Inc., 435 U.S. 589, 597–98 (1978). There is a strong presumption for allowing public access to court documents. In re Knight Publ’g Co., 743 F.2d 231, 234 (4th Cir. 1984).

Here, that presumption cannot be overcome by the reasons articulated by the government, and its second Motion to Seal will be denied. The clerk of the court will be directed to unseal the entire file as of 12:01 p.m. on November 12, 2009. In the event that the government or the defendant still wish this file to be sealed, a further motion to seal, if any, must be filed by no later than 9:00 a.m. on November 12, 2009. If any such motion is filed, the court will hear argument on the motion at 11:00 a.m. on November 12, 2009.

Despite the informal nature of this ruling, it shall constitute an Order of the Court, and the Clerk is directed to docket it accordingly.

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/s/  
Roger W. Titus  
United States District Judge